

REMARKS

Claims 1-10, 16-31 and 37-52 were pending in the present application, with claims 16-21 and 37-42 being withdrawn. Claims 1, 10, 22, 31 and 43 are amended, claims 16-21, 37-42 and 45-52 are canceled, and claims 53-58 are added herein. Accordingly, claims 1-10, 22-31, 43-44 and 53-57 are currently pending. No new matter has been added.

- (1) The final Office Action rejected claims 43-52 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 45-52 have been canceled, and claims 43-44 have been amended back to being dependent from claim 1, which is not rejected under section 101. Accordingly, Applicant respectfully requests withdrawal of this rejection.
- (2) The Office Action rejected claims 1, 4, 22 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Adduci et al., U.S. Patent No. 7,343,334 (“Adduci”) in view of Elliott, U.S. Patent No. 7,158,790 (“Elliott”). The Office Action rejected claims 2, 3, 23 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Adduci in view of Elliott and in further view of Official Notice. The Office Action rejected claims 5-10, 26-31 and 43-44 under 35 U.S.C. § 103(a) as being unpatentable over Adduci in view of Elliott and other cited references. Applicant respectfully traverses these rejections, and traverses Examiner’s assertions in the Response to Arguments section of the Office Action. Further, Applicant maintains and incorporates herein the arguments against these references provided in Applicant’s previous response dated November 23, 2009.

(A) Independent claim 1 recites “determining an investment return per sector for one or more of the sectors,” and “selecting one of the sectors in the wireless network for capital investment . . . based at least in part on the investment return per sector.” The cited prior art references, even if combined, do not teach or suggest these limitations.

The Examiner interprets Adduci’s “*return on investment (ROI)*” as analogous to Applicant’s investment return per sector,” and Adduci’s “applying financial analysis to different geographic regions as indicative of Applicant’s application to one or more of the sectors.” Office Action, p. 8 (Jan. 28, 2010). Applicant disagrees with these assertions.

Adduci discloses a financial analysis method related to “the provision of enhanced wireless communications services. The method includes accepting user input related to an existing wireless communications service and a proposed enhanced wireless communications service.” Adduci, Abstract (emphasis added); *see also id.*, Title, Claim 1, Specification (throughout). According to Adduci, enhanced wireless services include GPRS and UMTS. *See id.* at col. 2:14-18. As is well known in the art, enhanced wireless communications services are provided and made to function over an entire geographic region containing many sectors, and not on a per-sector or sector-by-sector basis. Instead, as explained by Adduci, “[a] particular geographic region may represent a country or a portion thereof. For example, a particular geographic region may represent a city or a metropolitan area.” *Id.* at col. 6:3-6.

Claim 1, in contrast, requires determining an investment return per sector for one or more of the sectors, and selecting one of the sectors in the wireless network for capital investment. These steps operate at the sector level of the wireless network, which, as

explained above, is not analogous to Adduci's methods operating at a geographic region level. This distinction from Adduci is reflected in various claim elements of claim 1.

First, Adduci's financial analysis is performed at a geographic region level such as a metropolitan area, a city, a country, or a portion of a country. This analysis for the provisioning of a communications service does not distinguish between sectors within a geographic region, and therefore is not indicative of claim 1's application to "one or more of the sectors."

Second, Adduci's ROI financial metric is for an enhanced communications service provided over a geographic region, and thus it is not analogous to claim 1's "investment return per sector for one or more of the sectors," which clearly requires a determination at the sector level, not the geographic region level.

Third, Adduci's procurement of telecommunications infrastructure is directly related to the provisioning of the communications service, and therefore the procurement of telecommunications infrastructure is performed at the geographic region level. Here again, this is quite different from selecting a sector for capital investment. Adduci does not perform a sector level analysis, and therefore cannot select a sector for capital investment, only a geographic region.

The Examiner further asserts in the final Office Action that "the statement of 'determining an investment return per sector for one or more of the sectors' (emphasis added) as recited in claim 1 is merely a statement of intended use." Office Action, p. 5. Applicant strenuously disagrees. The Examiner has not provided any specific basis for making this statement. This language of claim 1 is not suggestive or optional, nor does it

state an intended result. On the contrary, it limits the scope of the claim by requiring a specific and concrete step that must be performed. *See* M.P.E.P. § 2111.04.

As explained in detail above, this language is material to patentability, and therefore it cannot be ignored by the Examiner in order to change the substance of the claim. *See, e.g., id.* By way of further explanation, Adduci's financial analysis does not distinguish between sectors in a geographical region. Sector level engineering cost, however, such as base station equipment cost and operational cost, generally is a high cost for wireless service providers. *See, e.g.,* Specification, p. 1, lines 9-14. Unlike Adduci, Applicant's claimed invention provides a wireless service provider with a way to analyze engineering investment return by sector in order to improve wireless network investment decisions. *See* Claim 1; *see, e.g.,* Specification, p. 4, lines 14-22. Accordingly, Applicant respectfully requests that the Examiner take this language into consideration when applying the prior art references to claim 1.

For at least the above reasons, Applicant respectfully submits that claim 1 is patentable under section 103.

Claims 2-10, 43-44 and 53-54 depend from claim 1 and add further limitations. Applicant respectfully submits that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

(B) Independent claim 22 recites "computer program code for determining an investment return for the one or more sectors," and "for identifying one of the wireless network sectors for the capital investment . . . based at least in part on the investment return for the one or more sectors." Similar to the arguments above with respect to claim

1, the cited prior art references, even if combined, do not teach or suggest these limitations. Accordingly, Applicant respectfully submits that claim 22 is patentable under section 103.

Claims 23-31 and 55-58 depend from claim 22 and add further limitations. Applicant respectfully submits that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

(3) In view of the above, Applicant submits that the claims are in condition for allowance. No new matter has been added by this amendment. If the Examiner should have any questions, please contact Applicant's Attorney, Brian A. Carlson, at 972-732-1001. The Commissioner is hereby authorized to charge any fees due in connection with this filing, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,

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